

MICHAEL R. FLYNN

IBLA 85-189

Decided June 27, 1986

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, rejecting recordation filing for mining claim AA-28300 and declaring such claim null and void.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

When a single claim has been recorded with BLM pursuant to 43 U.S.C. § 1744 (1982) on more than one occasion and more than one mining recordation serial number has been assigned to the claim, the proper corrective procedure is to merge the respective files. If, on a combined basis, all requisite filings have been made, the claim should not be declared abandoned and void for failure comply with 43 U.S.C. § 1744(b) (1982).

APPEARANCE: Michael R. Flynn, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Michael R. Flynn appeals from a November 14, 1984, decision of the Anchorage District Office, Bureau of Land Management (BLM), rejecting his mining claim recordation filing for the Flynn No. 130-B placer mining claim (AA-28300) and declaring the claim null and void. BLM rejected the filing because appellant failed to identify the location of his mining claim by township, range, section, and meridian as required by 43 CFR 3833.1-2(b)(5)(i). Appellant filed his claim for recordation with BLM on August 27, 1979. He did not include therewith a description meeting the regulatory requirements.

On September 15, 1980, BLM sent a computer generated letter to appellant requesting information as to the location of his claim. Appellant responded by letter received by BLM on September 30, 1980, but did not provide the information requested. Subsequently, BLM issued a two-way memorandum dated October 6, 1980, which stated:

The computer generated letter that you received was sent to all mining applicants who had not included the section(s) and quarter section(s) within which their claims lie. We could not

find a township and range listed in the documents that you submitted and we do not have any maps showing where the claims are located. There is however, an identical claim (AA-37186) filed by Collinsville Twin Creek, Inc. which lists their claim in the Seward Meridian, Twp. 26 N, R. 12 W. Sec. 1 NW 1/4. They also list Michael Flynn as a partial owner. If you have no objection, we will combine the two cases to prevent further confusion. Please let us know [if] you have any objections.

On November 13, 1980, BLM received a response from appellant asking BLM to "do nothing to remove or jeopardize my rights." Subsequently, on June 4, 1984, BLM issued a formal notice to appellant asking for additional information regarding the location of his claim. On July 19, 1984, BLM issued a second notice granting appellant an extension of time to August 15, 1984, to obtain and submit required documents. Appellant filed a response with BLM on August 8, 1984, but did not provide the required information. On September 4, 1984, BLM issued an order to show cause why the mining claim should not be deemed abandoned and void. Appellant responded on October 9, 1984, but still failed to identify the location of his claim by township, range, section, and meridian. Finally, BLM issued its decision of November 14, 1984, which is the subject of this appeal.

On appeal, appellant argues that BLM already has the required information on record and submits various documents attached to his statement of reasons indicating there may have been multiple filings for his mining claim. These documents include a letter dated April 10, 1985, indicating appellant and A. T. Van Dolah are the co-owners of the Flynn No. 130-B claim, one of the Fairview Group of mining claims and that Collinsville-Twin Creek, Inc. (CTC), filed the notices of locations and annual evidence of assessment work performed for the Fairview Group. Also attached to the statement of reasons is a document entitled "Location of Mineral Claims for Bureau of Land Management Recordation" showing the location of the Flynn No. 130-B claim as "NW 1/4, sec. 1, T. 26 N., R. 12 W., S.M." This location is identical to the location of mining claim AA-37186 described in BLM's two-way memorandum of October 6, 1980.

[1] Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982), requires the owner of an unpatented mining claim to file with BLM "a description of the location of the mining claim * * * sufficient to locate the claimed lands on the ground." Department regulation 43 CFR 3833.1-2(b)(5)(i), requires such owner to furnish the location of his claim by "township, range, meridian and state obtained from an official survey plat or other U.S. Government maps." Under 43 CFR 3833.4(b), the "[f]ailure to file such information within the time allowed by decision shall cause the filing to be rejected" and final affirmance of such rejection by this Board "shall be deemed conclusive evidence of abandonment of the mining claim * * * and such mining claim * * * shall be void." ^{1/}

^{1/} We note BLM declared the claim "null and void." Based on the language of section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), and 43 CFR 3833.4(b), the term "abandoned and void" is more accurate. Ordinarily, "null and void" denotes a claim improperly located ab initio.

In this case, however, our affirmance of BLM's decision does not appear warranted. While we do not have the file containing the documents for claim AA-37186 before us, it may be that both appellant and CTC filed notices of location for the Flynn No. 130-B claim. As a result, two mining claim recordation numbers (AA-28300 and AA-37186) may have been assigned to the same claim. The proper procedure in such an instance was set forth in our decision in Ralph C. Memmott, 88 IBLA 377, 378 (1985):

It appears that appellant and/or his co-locators have filed notices of location for certain claims on more than one occasion. As a result more than one mining claim recordation number has been assigned to a single mining claim. When this happens, the proper procedure would be to merge the respective files and make a determination whether, on a combined basis, all of the requisite documents have been filed in a timely manner rather than declaring a claim represented by a specific mining recordation number to be null and void for failure to comply with 43 U.S.C. § 1744 (1982).

We therefore conclude BLM's decision should be set aside and the case remanded to BLM to determine if merger of mining claim files AA-28300 and AA-37186 is appropriate and if so, whether, on a combined basis, the filing requirements for the Flynn No. 130-B placer mining claim have been met.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is hereby remanded to the Anchorage District Office, BLM, for further action consistent herewith.

John H. Kelly
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

